

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 23 2005

OFFICE OF
MANAGING DIRECTOR

David Tillotson, Esq.
4606 Charleston Terrace, N.W.
Washington, D.C. 20007-1911

Re: Request for Waiver of Late Payment Penalty
Control No. 00000RROG-05-031

Dear Mr. Tillotson:

This letter responds to your requests, filed December 10, 2004 and January 4, 2005, for waiver of the \$557.50 penalty for failure to pay a required rulemaking fee in addition to an application fee at the time you filed an application on behalf of Chapparral Broadcasting, Inc. (Chapparral) for Station KLZY (FM) located in Park City, Montana. The application was for a construction permit to change the city of license and class from Channel 223C at Powell, Wyoming to Channel 223CO at Park City, Montana. You assert that the late payment penalty should be waived because the FCC's CDBS electronic application filing system is partially to blame for Chaparral's failure to submit the rulemaking fee at the time it filed its application.

As support for your assertion, you explain that Chaparral, upon completion of the electronic filing process, paid the filing fee for its application electronically. You state that the FCC's electronic payment system calculated the fee required for the application, but did not show that a rulemaking fee also was due. You assert that you reasonably relied upon the FCC's system to tell you what fees were owed. You claim that the FCC should not penalize the applicant for inadvertently failing to pay a rulemaking fee, when it relied upon the FCC's fee calculation system to tell the applicant what fees to pay.

As a Commission licensee, Chapparral is charged with the responsibility to familiarize itself with the Commission's rules and requirements. Therefore, your lack of familiarity with the Commission's rules governing and public notices concerning application fees, including the fees required for rulemakings, does not mitigate or excuse Chapparral's failure to pay the mandatory rulemaking fee along with its application fee in a timely manner. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances." *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970). Furthermore, the Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent for late payment of any required application fee. 47 U.S.C. §158(c)(1). Moreover, the Act states that the Commission may dismiss any application or other filing for failure to pay in a timely manner any application fee or penalty under Section 8 of the Communications Act. 47 U.S.C. §158 (c)(2).

As explained in a letter sent to you on December 10, 2004 by George H. Gwinn, Supervisory Engineer, Audio Division, Media Bureau, the Report and Order in the subject rulemaking makes clear that the Commission's rules impose a requirement to pay the rulemaking fee, in addition to the application fee, when filing the application to implement an allotment change. Obviously, Chapparral was aware that the proceeding requesting a change in the Table of Allotments was a rulemaking proceeding because it commenced the proceeding by filing a Petition for Rulemaking. *See Notice of Proposed Rule Making and Order to Show Cause in the Matter of Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations*, 17 FCC Rcd 7234 (2002). The Report and Order issued in response to that NPRM specifically states:

Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(l), any party seeking a change in community of license of a TV or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Chapparral Broadcasting, Inc. licensee of FM Station KLZY, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

Report and Order, In the Matter of Section 73.202(B), Table of Allotments, FM Broadcast Stations (Park City, Montana) MB Docket No. 02-79, RM-10424, 19 FCC Rcd 2092 (2004) ¶ 21. Further, the *Report and Order* required that the Secretary of the Commission send by Certified Mail Return Receipt Requested, a copy of the Report and Order to you, David Tillotson, Esq., at your Law Offices. *Id.* at ¶ 22.

Our records reflect that we received Chapparral's late filed rulemaking fee of \$2,230.00 and its late payment penalty of \$557.50 on January 28, 2005. We find that Chapparral did not meet its obligation to file a rulemaking fee at the time that it filed its application as required by the rules. We therefore deny your request for waiver of the late payment penalty. If you have any questions concerning this matter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark A. Reger
Chief Financial Officer

DAVID TILLOTSON
Attorney at Law

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Washington, DC 20007-1911

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January 4, 2005

Mr. Andrew Fischel
Managing Director
Federal Communications Commission
Washington, DC 20054

Re: Request for Waiver of Late Payment Penalty

Dear Mr. Fischel:

I am writing to request a waiver of the 25% late payment penalty that the Commission assessed against Chaparral Broadcasting, Inc. ("Chaparral") because it did not submit a Rulemaking Fee in addition to an application fee at the time it filed its application to change the city of license and class of Station KLZY, Park City, Montana, Facility ID 10036

Chaparral paid the filing fee for its application electronically at the end of the electronic filing process. The FCC's electronic payment system calculates the fees required when applications are submitted, however, the system is not programmed to show that a rulemaking fee was due. The fact that the electronic fee payment system did not ask for the regulatory fee contributed materially to Chaparral overlooking the need to submit the fee with the application as it reasonably relied upon the FCC's system to tell it what fees were owed, and it dutifully paid the fees that the system asked for. In other words, as FCC has set up a system where it automatically tells applicants what fee to pay when their applications are filed, the FCC should not penalize an applicant who, as a consequence of relying upon the FCC's fee calculation system to submit the required fees at the time of filing inadvertently neglects to pay a rulemaking fee.

Sincerely,



David Tillotson

C: Mark Reger (via email)

2 dg letter
Assign to: Regina
30 dg tickler

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JAN 10 2005
FBI - WASH DC

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAY 23 2005

OFFICE OF
MANAGING DIRECTOR

Pantelis Michalopoulos, Esq.
Philip L. Malet, Esq.
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, DC 20036-1795

Re: EchoStar Satellite L.L.C.
Petition for Waiver of Application Fees
Fee Control Number 00000RROG-05-039

Dear Counsel:

This is in response to your petition for waiver of application fees dated February 3, 2005, that you submitted on behalf of EchoStar Satellite L.L.C. (EchoStar) in connection with a blanket application to operate receive-only earth stations in the United States to provide Direct Broadcast Satellite (DBS) programming from a Canadian-licensed satellite.¹ You request that the Commission find that no fee is required for the one million receive-only earth station antennas, i.e., waive these fees, or "find that the VSAT [i.e., Very Small Aperture Terminal] application fee [i.e., \$8,260.00] is appropriate." Our records reflect that EchoStar paid a \$8,260.00 filing fee with its receive-only earth station license application.

You recite that EchoStar requests authorization for one million technically identical receive-only earth station antennas "to expand its provision of multichannel video services to consumers in the United States." You state that in the absence of Commission rules designating charges for the type of DBS application at issue here, the application could be subject either to the \$8,260.00 fee for an initial application for a fixed satellite VSAT system under section 1.1107(6)(a) of the Commission's rules, 47 C.F.R. 1.1107(6)(a), or the \$340.00 fee for an initial application for a receive-only earth station under section 1.1107(5)(a), 47 C.F.R. 1.1107(5)(a), for each of the one million earth stations, for a total fee of \$340,000,000. Citing *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, 21592 (1996), you assert that EchoStar's proposed system is consistent with the Commission's definition of "VSAT networks which are networks of technically identical small antennas that generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands." You aver that because the proposed earth stations are technically identical, "many of the processing activities required to issue a new system license . . . are simply not required[.]" You assert that the Commission has accepted

¹ See *EchoStar Blanket Receive-Only Earth Station Application - 129 W.L., File No. SES-LFS-20050203-00133* (filed Feb. 3, 2005).

application fees for VSAT networks in similar contexts.² You maintain that grant of the application would enable EchoStar to provide local-to-local programming for its subscribers and to compete more effectively with cable incumbents. You also claim that a grant would enable EchoStar to offer DBS services to the United States from a new Canadian orbit location. You assert that to require EchoStar to pay a \$340.00 fee for each of its one million earth stations “merely because it is providing a service from a non-U.S. satellite when an operator providing an identical service using U.S. licensed satellite would not need to apply for licenses for each of its consumer dishes” would constitute “overtly discriminatory treatment among DBS and Direct-to-Home (DTH) providers serving the United States.”

The Commission has discretion to waive filing fees “in any specific instance for good cause shown, where such action would promote the public interest.” 47 U.S.C. § 158(d)(2). We construe this waiver authority narrowly, and limit its application to only those situations where the applicant has made the requisite showing of good cause and demonstrated that the action would promote the public interest.

The Commission previously has noted the special circumstances among earth station licenses to receive satellite transmissions, including the processing extended to large numbers of “technically identical small antenna earth station facilities.”³ Based on the circumstances of this application, we find that EchoStar’s plan comports with the Commission’s expressed intent in the *DISCO II* decision.⁴ As in that situation,

² In support, you cite *Digital Broadband Application Corp.*, 18 FCC Rcd 9455 (2003) and *Application of DIRECTV Enterprises, LLC*, 9 FCC Rcd 15529 (International Bur. 2004) (granting DIRECTV’s application to use one million receive-only earth stations to provide direct broadcast satellite service in the U.S. using the Canadian-authorized DIRECTV satellite (File No. SES-LFS-20040112-00023) (*DIRECTV Application*)). See also Letter from Mark A. Reger, Chief Financial Officer (CFO), Office of Managing Director (OMD), FCC to Gary M. Epstein, Esq., et al. (dated June 15, 2004) (finding that “the public interest is served in permitting . . . [the] blanket [*DIRECTV Application*] and waiving the fees that would have been required to accompany one million separate license requests [i.e., \$325,000,000.00]” and accepting the fee submitted by DIRECTV with the application, i.e., \$7,935.00, which was equivalent to the then-current VSAT application fee) (*DIRECTV Letter Decision*)).

³ See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order*, 2 FCC Rcd 947, ¶¶ 245-248 (1987).

⁴ See *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Report and Order*, 12 FCC Rcd 24094, ¶¶ 201-204 (1997) (*DISCO II*) (e.g., “To impose the least burdensome requirements possible while fulfilling our regulatory responsibilities, we will permit applicants to request ‘blanket’ licenses for large numbers of technically identical receive-only antennas, such as home ‘dishes.’ Blanket applications may be filed by the space station operator, the service supplier, the

Commission staff will expend fewer resources and will be able to more efficiently process EchoStar's application because the multiple earth stations are technically identical. Consequently, we find that you have shown that the public interest is served in permitting a blanket application and waiving the fees that would have been required to accompany one million separate license requests.⁵

Your request is granted to the extent stated herein and the Commission accepts your check of \$8,260.00. If you have any questions concerning this letter, please call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

equipment manufacturer, or the electronics retailer. Further in cases where we have previously granted a particular satellite access to the United States to provide DTH/DBS or other receive-only services, we will allow the earth station applicant to include an exhibit citing to the previous Commission grant of access for that satellite and stating that it intends to use the satellite to provide the same services as those previously authorized.”).

⁵ See *DIRECTV Letter Decision*; see also Letter from Mark Reger, CFO, OMD, FCC, to Patricia J. Paoletta, Esq., Todd M. Stansbury, Esq., and Jennifer D. Hindin, Esq. (dated June 24, 2002) (finding that the public interest is served in waiving the fees for Digital Broadcasting Applications, Corp. that would have been required in connection with a consolidated application for authority to operate one million transmit and receive earth stations with FSS and DBS satellites for an integrated two-way broadband video data service, and finding that individual application fees for each component are appropriate, i.e., a fee amount equivalent to a VSAT initial application (per system), as well as fee amounts for a fixed satellite transmits/receive earth station application, and a lead application for a fixed satellite transmits/receive earth station. DBAC proposed to offer service using Ku-band capacity on an ALSAT FSS satellite and DBS capacity on Canadian licensed satellites).